

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b))	
Table of Allotments)	MM Docket No. 98-198
FM Broadcast Stations)	RM - 9304
(Cross Plains, Texas et al.))	

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

OPPOSITION TO "MOTION TO STRIKE"

WBAP/KSCS Operating, Ltd. ("WBAP") and Blue Bonnet Radio, Inc. ("BRRI"), by its counsel, hereby submit this Opposition to the "Motion to Strike Unauthorized Statement for the Record as Filed by WBAP/KSCS Operating, Ltd. and Blue Bonnet Radio, Inc.," submitted on January 29, 1999 by Gulfwest Broadcasting Company and Sonoma Media Corp. ("Gulf-Sonoma"). Gulf-Sonoma's "Motion to Strike" is directed to the "Statement for the Record" filed on January 20, 1999 by WBAP and BRRI. Contrary to Gulf-Sonoma's assertions, the "Statement for the Record" did not make any new arguments, nor is it disruptive or prejudicial. The statement merely clarified the expression of interest made jointly by WBAP and BRRI. In support hereof, WBAP/BRRI state as follows:

BACKGROUND

1. The Commission requires that channel changes be made only upon demand therefor. Clearly, there was an expression of interest in the allotment of Channel 277C to Allen, Texas by the party that can and will effectuate the proposal. The Commission does not need additional

expressions of interest in order to accept the proposal and proceed with its review and processing. Gulf-Sonoma offered no case law to support its view that once an expression of interest exists from the party that intends to effectuate the proposal, it may be necessary to provide additional expressions to anticipate certain unforeseen contingencies before the Commission can accept a counterproposal for consideration.

2. Nevertheless, in the "Statement for the Record" BRRI offered its own expression of interest which would arise only in the unexpected event that future circumstances caused the contractual obligations of WBAP and BRRI to cease without WBAP having exercised its option to purchase Station KEMM. Only at that point would it be necessary to have BRRI's statement of interest. There should be no doubt on the part of the Commission that after all the time and effort spent by WBAP to create and develop this proposal, that WBAP fully intends to exercise its option and implement this proposal. In addition, BRRI was careful not to make any new arguments concerning this proposal.

3. Such a filing is hardly disruptive to the process. Rather it is Gulf-Sonoma's overreaction and mischaracterizations that cause the disruption. In addition, no party is prejudiced by the clarification because, as WBAP/BRRI observed, Gulf-Sonoma's conflicting proposal is unacceptable and ALALATEX consented to an alternate channel.

4. Contrary to Gulf-Sonoma's gross mischaracterization, WBAP/BRRI made no arguments and provided no new information concerning the fatal defects in Gulf-Sonoma's Counterproposal. Rather, WBAP/BRRI merely stated, as it had done earlier, that the Gulf-Sonoma Counterproposal was unacceptable for consideration in this proceeding because it contained numerous defects. As such, Gulf-Sonoma is not prejudiced by the Statement for the Record.

WBAP/BRRI offered proper case law in support of its position. On the other hand, none of the cases cited by Gulf-Sonoma is specifically applicable in the rule making context.

5. As for ALALATEX, WBAP/BRRI made no arguments concerning whether ALALATEX properly participated at the comment stage. WBAP/BRRI merely observed that ALALATEX failed to file its own comments as is typically done and noted that an alternate channel was available (Channel 290C3) to Cross Plains.

6. Nevertheless, WBAP/BRRI has now been served with a withdrawal of interest by ALALATEX in applying for a channel at Cross Plains. WBAP/BRRI will take this occasion to state, to the extent required by Section 1.420(j) of the Commission's Rules, that it has not agreed to pay or promised to pay any consideration to ALALATEX for its withdrawal.¹ Thus, there is clearly no prejudice to ALALATEX for the Commission to accept the Statement for the Record.

7. WBAP/BRRI made no specific mention of any particular defect in its Statement for the Record, yet, Gulf-Sonoma raises a new issue by arguing that circumstances surrounding the withdrawal of Equicom's consent to the Gulf-Sonoma proposal are suspicious. The Equicom filing speaks for itself and adequately explains why Equicom decided on its own that its contractual obligations with WBAP/BRRI and with First Broadcasting Management, L.L.C. included a requirement that it could not consent to a conflicting proposal. Such provisions are standard practice and should cause no suspicion on the Commission's part. Gulf-Sonoma's ridiculous assertions of threats and pressure from WBAP/BRRI and demands for an investigation are statements of a

1. There is no written or oral agreement with ALALATEX. Therefore, affidavits from the principals of WBAP and BRRI are not necessary. See Section 1.420(j) (5) of the Commission's Rules.

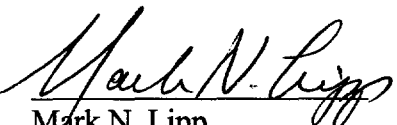
desperate party who recognizes that its proposal is in jeopardy and thus makes unfounded and unsupported allegations of WBAP/BRRI's actions.

CONCLUSION

8. WBAP/BRRI offered a simple and straightforward Statement for the Record. It explained why it was doing so and how acceptance of the statement would not prejudice any other party. Gulf-Sonoma completely overreacted and out of desperation makes several outlandish allegations without any factual basis that WBAP/BRRI presented new arguments, disrupted the proceeding and prejudiced "every other party, as well as the Commission itself, to a fair proceeding..." These charges have no creditability particularly when Gulf-Sonoma itself takes the occasions to make new arguments which by their very nature disrupts the proceeding and causes prejudice to WBAP/BRRI. The Commission should deny the motion to strike and ignore the gratuitous arguments made by Gulf-Sonoma.

Respectfully submitted,

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February 17, 1999

CERTIFICATE OF SERVICE

I, Kay D. Dallosta, a secretary in the law firm of Shook, Hardy & Bacon, do hereby certify that I have on this 17th day of February, 1999 caused to be mailed by first class mail, postage prepaid, copies of the foregoing **"Opposition to Motion to Strike"** to the following:

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